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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,683	01/08/2004	Hirofumi Muratani	247273US2SRD DIV	5927
22850	7590	05/30/2008	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			GYORFI, THOMAS A	
		ART UNIT	PAPER NUMBER	
		2135		
		NOTIFICATION DATE	DELIVERY MODE	
		05/30/2008	ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/752,683	MURATANI, HIROFUMI	
	<b>Examiner</b>	<b>Art Unit</b>	
	Thomas Gyorfi	2135	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 February 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 4-8, 14-19 and 23-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 4-8, 14-19 and 23-27 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

1. Claims 4-8, 14-19, and 23-27 remain for examination. The correspondence filed 2/25/08 amended claims 4, 5, 7, 8, 14, 15, 19, and 23-27.

### ***Response to Arguments***

2. Applicant's arguments with respect to the previous rejections under 35 USC 112, 2<sup>nd</sup> paragraph, are moot in view of Applicant's amendment to the claims.

3. With respect to Applicant's arguments against the rejections of the claims under 35 USC 101, Applicant argues, "*Each of the independent claims recite inter alia receiving predetermined content which contains the embedded code therein from an external device. Software per se does not receive anything from an external device.*" (page 13, 1<sup>st</sup> paragraph). Examiner disagrees. First, it is noted that the "unit" claims all recite input & output ports configured to receive or send data; this is distinct from having the port(s) actually receive or send data as appropriate. Software *per se* is by definition the means to configure a computer into performing one or more tasks, ergo the claims as written would still cover a software *per se* embodiment. Second, Applicant's argument fails to address Examiner's point from the previous Office Action wherein the term "port" would be understood by one of ordinary skill in the art as a software construct used by a computer to send and receive data. It is accepted as a point of law that software, in order to be considered as statutory subject matter, must be claimed as being encoded on some computer-readable medium, to be used as an element in a computer system, thus defining the structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized: *In re Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035. The claims lack any recitation that would explicitly limit the claimed

"unit" to being a physical thing, nor does the specification provide any teaching that would suggest the claimed "unit" as being anything other than a "series of bits". Additionally, in response to Applicant's arguments regarding the claim term "section" (see the amendment of 2/25/08, page 12, bottom paragraph), given the software-only disclosure Examiner respectfully submits that artisan would have understood the claim term "section" to refer to that portion of software that would, when executed by a computing device, implement the claimed functionality; it is further observed that, just as with regards to the input and output ports, the various sections of the unit are also merely configured to provide various functionality, but not necessarily perform said functionality, thus further supporting the non-statutory software embodiments of the claims.

#### ***Claim Rejections - 35 USC § 101***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 4-8, 14-19, and 23-27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 5-8, 14-19, and 23-27 are directed toward a "unit for determining an identification number..." which, as can best be determined by the Examiner, refers exclusively to a software *per se* embodiment of the instant invention, as evidenced by the fact that the only definition of the term "unit" found in the specification refers to a series of bits (page 22), coupled with a lack of recitation for any actual hardware to implement the claimed limitations. It is also noted again that the terms "input port" and "output port", when understood in the context of a communications network as relied upon by the Applicant to resolve the previous 35 USC 101 rejection (cf. the amendment of 9/4/07, footnote 1; cf. specification, page 36, lines 15-26), are

themselves abstract constructs represented by a series of bits (see the Comer reference previously cited in the Office Action of 11/28/07). Thus the amended claims fail to remedy the original problem of the claims encompassing non-statutory subject matter, i.e. software *per se*. Claim 4 is rejected as evidenced by claim 5.

***Claim Rejections - 35 USC § 112***

6. Claims 4-8, 14-19, and 23-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recite “an embedded code” that “concatenates a plurality of component codes”; however, it is unclear what was intended by this limitation. The instant specification discloses wherein a concatenation unit performs the step of concatenating the plurality of codes (e.g. page 22, lines 9-12); however, it is unclear how an embedded code – which is not disclosed as being software but is in fact a single numerical value expressed as a binary value (page 22, lines 15-20) – can concatenate any number of codes in and of itself; rather, the embedded code appears to be a *concatenation of* the plurality of codes.

***Allowable Subject Matter***

7. Claims 4-8, 14-19, and 23-27 would be allowable over the prior art, pending resolution of the aforementioned objections and rejections under 35 USC 101.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2135

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Gyorfi whose telephone number is (571)272-3849. The examiner can normally be reached on 8:30am - 5:00pm Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached on (571) 272-3859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TAG  
5/13/08

/KIMYEN VU/  
Supervisory Patent Examiner, Art Unit 2135